

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

CHRISTOPHER FAIN;  
ZACHARY MARTELL; and  
BRIAN MCNEMAR,  
individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 3:20-0740

WILLIAM CROUCH, in his official capacity as  
Cabinet Secretary of the West Virginia  
Department of Health and Human Resources;  
CYNTHIA BEANE, in her official capacity as  
Commissioner for the West Virginia Bureau for  
Medical Services;  
WEST VIRGINIA DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES, BUREAU FOR  
MEDICAL SERVICES;  
TED CHEATHAM, in his official capacity as  
Director of the West Virginia Public Employees  
Insurance Agency; and  
THE HEALTH PLAN OF WEST VIRGINIA, INC.,

Defendants.

**ORDER**

Pending before the Court is the Amended Joint Motion to Dismiss Plaintiffs' Affordable Health Care Act Claim against Ted Cheatham (ECF No. 38). For good cause shown, the original Joint Motion (ECF No. 36) is **DENIED AS MOOT** and the Amended Motion (ECF No. 38) is **GRANTED**. The claim by Plaintiffs Brian McNemar and Zachary Martell against Defendant Ted Cheatham in Count II of the Complaint is **DISMISSED WITH PREJUDICE**.

The Clerk is **DIRECTED** to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: February 17, 2021

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE